IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 251 of 2004
with
SPECIAL CIVIL APPLICATION No 474 of 2004
with
SPECIAL CIVIL APPLICATION No 2953 of 2004
with
SPECIAL CIVIL APPLICATION No 9341 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANDLA CLEARING AGENCY PVT. LTD.
Versus
UNION OF INDIA

Appearance:
MR PARESH M DAVE for Petitioners
MR JITENDRA MALKAN for Respondents

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 03/08/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

With the consent of the learned counsel for the parties, the petitions are taken up for final disposal today.

2. Since these petitions challenge the orders passed by the Commissioner of Customs, Kandla regarding import of goods such as RBD Palmolien allegedly under-invoiced and cleared duty free by submitting forged advance licences and TRAs and sold in the local markets through brokers. The whole transaction is stated to have been masterminded by one Mr More of More Group of Companies. In identical circumstances involving the same group of Companies, a large number of other assessees had filed appeals before the Customs, Excise & Service Tax Appellate Tribunal, Mumbai. Those appeals have been allowed by the Tribunal and the matter is remanded to the Commissioner of Customs for de novo adjudication for the reasons recorded in the orders passed by the Tribunal on 26.6.2003 and thereafter in another batch of appeals, on 2.6.2004.

3. Since the petitioners claim to be similarly situate as a number of appellants before the Tribunal and are urging the same contentions which they had urged in the aforesaid group of appeals, Mr Paresh M Dave, learned counsel for the petitioners seeks leave to withdraw these petitions with a view to filing appeals before the Tribunal and prays that the Tribunal may be directed to hear the appeals on merits without raising the bar of limitation.

4. Mr Jitendra Malkan, learned senior standing counsel for the respondent authorities has no objection if leave as prayed for is granted to enable the petitioners to prefer appeals before the Tribunal.

The learned senior standing counsel for the respondents states that the respondents will not object to any application for condonation of delay if such applications for condonation of delay are filed by 24.8.2004.

5. Having regard to the aforesaid submissions and the fact that these petitions were pending before this Court, we permit the petitioners to withdraw these petitions in order to enable the petitioners to prefer appeals before the Customs, Excise and Service Tax Appellate Tribunal and if the petitioners file such

appeals within three weeks from today, the Tribunal shall consider, entertain and decide the applications for condonation of delay in proper perspective.

6. Subject to the above direction and observations, the petitions are disposed of as withdrawn.

Rule is discharged with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-